Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 88-399

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

BILLIE HAMMOND,
Petitioner,

vs.

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,
Respondent.

On a Petition for a Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

SUPPLEMENTAL BRIEF

RICHARD M. ROESSLER
Counsel of Record
THOMAS R. PETERS
GUNDLACH, LEE, EGGMANN,
BOYLE & ROESSLER
5000 West Main Street, Box 692
Belleville, Illinois 62223
(618) 277-9000

Attorneys for Respondent
Terminal Railroad Association
of St. Louis

QUESTION PRESENTED FOR REVIEW

Whether this Court should exercise its discretion under Supreme Court Rule 17.1 and issue Writ of Certiorari.

Terminal Railroad Association of St. Louis is a corporation, without any subsidiaries or affiliates. The Terminal Railroad Association of St. Louis' stockholders are the Burlington Northern Railroad Company, the Missouri Pacific Railroad Company, the St. Louis Southwestern Railroad Company, the Illinois Central Railroad Company, the CSX Transportation Company, the Norfolk & Western Railway Company, the Southern Railway Company, and the Missouri, Kansas and Texas Railway Company.

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ARGUMENT

Upon this court's invitation, the United States, by the Solicitor General, filed an amicus brief in this action. The brief discussed new matters not raised by the Petitioner in his brief and, therefore, not addressed by Respondent in its Brief in Opposition. This Supplemental Brief is filed pursuant to Supreme Court Rule 22.6.

The United States agrees with Respondent that the Petition for Writ of Certiorari should be denied. (Brief of Amicus

Curiae, p. 13). The decision of the court of appeals is not in conflict with the decisions of any other circuit court or the decisions of this Court.

Amicus further argues that the court of appeals erred in finding that the acts alleged in the complaint were not cognizable under the Federal Employers' Liability Act, 45 U.S.C. §51 *et seq.*, and in not remanding the case to the district court for further factual development concerning the nature of the Respondent's conduct and Petitioner's injury. Respondent disagrees.

The appellate court correctly applied the artful pleading doctrine and looked beyond the simple invocation of the FELA statute in the complaint and at the actual allegations of wrongful conduct. *See Nuclear Engineering Co. v. Scott*, 660 F.2d 241, 249 (7th Cir. 1981), *cert. denied*, 455 U.S. 933 (1982). Under *Lancaster v. Norfolk & W. Ry.*, 773 F.2d 807 (7th Cir. 1985), *cert. denied*, 480 U.S. 945 (1987), the conduct alleged is not actionable under the FELA. The court correctly found that the conduct alleged constituted a minor dispute under the Railway Labor Act, 45 U.S.C. §151 *et seq.*, and dismissed the complaint. Resolution of the "purely emotional issue" reserved in *Atchison, T. & S.F. Ry. v. Buell*, 480 U.S. 557, 107 S.Ct. 1410 (1987), was not necessary to the court's conclusion.

In *Buell*, this Court remanded in connection with the "purely emotional injury" issue because the underlying plaintiff never briefed or argued the issue in the lower courts. *Buell*, 107 S.Ct. at 1417. In the instant case, Petitioner has conceded since his initial brief that only emotional injuries are involved and has fully briefed the recoverability of these damages under the FELA. This Court noted in *Buell* that the issues surrounding the "purely emotional injury" issue could be decided on appropriate motion, as in this case. *Buell*, 107 S.Ct. at 1418 n.22.

The possibility of summary reversal, as suggested in a footnote to the amicus brief, should not be considered by this Court.

Reversal is inappropriate since the lower courts did not err. Summary disposition is inappropriate since it would deprive the parties and this Court of full briefing on all issues beyond the limited issue of the necessity for this Court's review under Supreme Court Rule 17.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

TERMINAL RAILROAD
ASSOCIATION OF ST. LOUIS

Richard M. Roessler
Thomas R. Peters
GUNDLACH, LEE, EGGMANN,
BOYLE & ROESSLER
5000 West Main Street
Box 692
Belleville, Illinois 62223
(618) 277-9000

Attorneys for Respondent